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December 1, 2009

Ms. LaDonna Castañuela
Chief Clerk (MC 105)
Texas Commission on Environmental Quality
P.O. Box 13087
Austin, Texas 78711-3087

Re: **Joint Response of Sierra Club and Mr. Douglas Ray** to NRG Letter to TCEQ, Revised Proposed Order, and Executive Director's Revised Draft Permits; Re: TCEQ Docket No. 2007-1820-AIR and 2008-1210-AIR; Consolidated SOAH Docket No. 582-08-0861; *Application of NRG Texas Power LLC for State Air Quality Permit 79188 and Prevention of Significant Deterioration Permit PSDTX-1072 and Hazardous Air Pollutant Major Source [FCAA § 112(g)]Permit HAP-14*

Dear Ms. Castañuela:

Sierra Club and Mr. Douglas Ray (Protestants) submit this letter in response to the Commission's November 18, 2009 decision on the above-referenced matter. Due to the substantive changes to the ALJs' proposed findings and proposed Order, we request an extension of time to review and respond to the revised Order and revised draft permits, and we respectfully request that the Commission continue this matter at the December 9, 2009 Agenda Meeting.

Comment on Revised Order

Protestants object to the process – not found in rule or statute – that was employed by the Commission in this proceeding, whereby the Applicant was tasked with drafting revised findings of fact and conclusions of law. In addition, we strongly object to the Applicant's "Explanations of Changes." Providing Sierra Club and the other parties this opportunity to respond to the Applicant's proposed revised order and explanation of changes does not cure this improper remand to a party. Further, because of the intervening Thanksgiving holiday, Protestants have had only 2 business days to review and respond to these lengthy and complex documents.

Protestants assert and reserve their rights to file a motion for rehearing complaint with Tex. Gov't Code § 2001.146. To date and pursuant to Tex. Gov't Code § 2001.142 (*Notification of Decisions and Orders*), no order has been issued or adopted by the Commission. The motion for rehearing will detail both procedural and substantive errors, if any, committed by the Commission upon adoption of a final order.

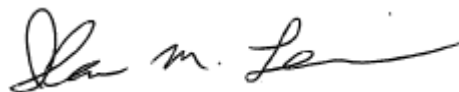
Comment on Revised Draft Permits:

On November 24, 2009, the Executive Director served revised draft HAP and PSD permits to the parties. Sierra Club objects to the issuance by the Executive Director of these revised Draft HAP and PSD permits, and has not had sufficient time, given the intervening Thanksgiving holiday, to review these documents to comment on the changes. Based on an initial review, it appears that revised Permit 79188/PSD-TX-1072, Special Condition 8(A), fails to incorporate the ALJs' proposal that particulate matter be monitored using a continuous emissions monitoring system (CEMS). This deficiency violates at least two requirements: (1) that MACT limits apply at all times, and (2) that emission limits be enforceable.

Further, the law requires a single pre-construction permit, not two separate HAP and PSD permits. Federal Clean Air Act § 165(a)(3)(C), 42 USC § 7475(a)(3)(C). Discrepancies between the two separate MAERTs in the PSD and HAP permits illustrate why this matters. For example, the difference in the BACT and MACT limits for mercury and hydrofluoric acid result in two different ton-per-year limits for these pollutants in the two MAERTs. Also, the Draft HAP permit MAERT does *not* contain any pound-per-hour limits for several key HAPs (PM, HF, HCl, and Hg), thus violating the requirements that MACT limits be enforceable and apply at all times. The confusion and unenforceability caused by having two separate preconstruction permits would be remedied by consolidating the two separate permits into a single preconstruction permit with a unified MAERT reflecting the most stringent applicable limits.

For the foregoing reasons, we request an extension of time to respond to this important matter.

Sincerely,

A handwritten signature in black ink, appearing to read "Ilan M. Levin", with a stylized flourish at the end.

Ilan Levin
COUNSEL FOR SIERRA CLUB &
ON BEHALF OF MR. DOUGLAS RAY

cc: Service List

CERTIFICATE OF SERVICE

I hereby certify that I have served a true and correct copy of Sierra Club and Mr. Douglas Ray's Response Letter on this 1st day of December, 2009 to the Chief Clerk of the Texas Commission on Environmental Quality and provided true and correct copies to the service list below.



Layla Mansuri
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For the Chief Clerk

Via Electronic Submission

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